**DRAFT BRIEFING FOR DAN**

TRIBAL CONSULTATION AND REVIEW UPDATE FOR DESCHUTES TOTAL MAXIMUM DAILY LOAD (TMDL), THURSTON COUNTY, WASHINGTON

**Meeting Purpose**

Provide background information and update Dan on the following:

- Status of EPA TMDL Review;
- Squaxin Island Tribe TMDL Concerns; and
- Options for Moving Forward

**Project Background**

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 $mi^2$) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. Significant data collection to support the Phase 1 TMDL began in 2003. Data analysis and modeling concluded in 2012. On December 17, 2015, Ecology submitted the final Phase 1 TMDL to EPA for approval. The submitted TMDL package includes a request that EPA approve allocations for 71 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment). EPA understands that Ecology is developing a TMDL for Budd Inlet and Capitol Lake as Phase 2 of the Deschutes TMDL. According to the timeline shared with EPA in March 2016, Ecology is tentatively planning to submit the Phase 2 TMDL for approval in June 2019.

The Squaxin Island Tribe (SIT) has maintained throughout the TMDL development and public notice process that critical aquatic improvement measures (see *Squaxin Island Tribe TMDL Concerns*) are missing from the TMDL. EPA met with SIT in 2015 [details/confirm] to discuss these concerns. In

**Ex. 5 - Deliberative Process**

final stages of the Phase 1 TMDL unfolded, NWEA filed a complaint in 2014 regarding Ecology's use of Natural Condition Criteria (NCC). Should NCC provisions be rescinded, parts of the Phase 1 TMDL may be invalidated because the TMDL targets criteria (temperature, DO, and pH) that are based on system potential (~modeled interpretation of highest quality condition attainable).

**Quick Facts**

- ✓ Ecology is seeking approval for TMDLs that span 71 segments
- ✓ Category 5 impairments: water temperature, DO, pH, fecal coliform bacteria, and fine sediment
- ✓ Category 4C pollution: in-stream flows and large woody debris
- ✓ TMDL split into two phases given technical complexity and political ramifications related to Capitol Lake and Budd Inlet impairments
- ✓ Surrogates are proposed for 4 of 5 pollutants
- ✓ The TMDL seeks to achieve temperature, DO, and pH water quality standards through increased stream shading
- ✓ Ecology predicts that WQS for temperature, DO, and pH will be achieved by 2065.

- ✓ Permittees include: 5 municipal stormwater, 7 sand & gravel, 9 industrial stormwater, and 25+ construction stormwater. The boundary of the Phase 1 TMDL does not include wastewater treatment point sources. Phase 2 of the TMDL will include the LOTT regional wastewater facility that serves south Puget Sound.
- ✓ **SIT TMDL concerns include**: reduced instream flows for aquatic life, lack of woody debris, and limited reasonable assurance that shading buffers will be fully implemented and temperature WQS achieved.

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**Status of Phase 1 TMDL Review**

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**Squaxin Island Tribe Concerns**

SIT has maintained throughout the TMDL development and public notice process that the Phase 1 TMDL should address habitat (lack of woody debris, reduced stream flows). In addition, long implementation timelines in combination with decreasing habitat have prompted SIT to question if the TMDL provides reasonable assurance. In an email dated 6/10/2016, Erica Marbet (SIT Technical Representative)

requested the following agenda items be including during our consultation meeting scheduled for June 30th, 2016:

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" **River Flow**

- Decreasing flows of the Deschutes River
- River flow in the Ecology's Deschutes River temperature modeling
- *Regulatory separation of instream flows from the TMDL is an artificial distinction and precludes a comprehensive solution to the Deschutes River's degradation.*
- Actions to be taken.

**Riparian Shade**

- *There is no reasonable assurance that Ecology can bring about the restoration of a 75 ft forested buffer to the Deschutes River in a meaningful amount of time.*
- Scale of the Deschutes River (flow, channel, and valley) relative to a 75 ft riparian buffer.
- Large woody debris as target allocations.
- Actions to be taken.

Addressing river flow is even more crucial, given that likelihood of full riparian shade restoration is low, and the timeframe is very long. "

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# Ex. 5 - Deliberative Process

"The Clean Water Act does not allow Ecology to draw a bright line between its water quality and quantity programs. Rather, the Act requires "comprehensive solutions" to prevent, reduce and eliminate pollution in concert with programs for managing water; and (2) establishes the supreme goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. Drawing a bright line is a prohibited "artificial distinction." PUD No. 1 v. Ecology, 511 U.S. 700, 719 (1994)."

To my knowledge, SIT has not explicitly requested that minimum in-stream flows be determined for the Deschutes River. However, such conversations are likely to arise or are already occurring.

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